

Notice of Allowability

Application No.

09/341,407

Examiner

ILIA OUSPENSKI

Applicant(s)

DELOVITCH, TERRY L.

Art Unit

1644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Applicant's amendments, filed 05/017/2004 and 08/18/2004.
2. ☒ The allowed claim(s) is/are 1, 5, 6, 9, and 32 - 34 (renumbered 1 - 7).
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 08/17/2004.
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date _____.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

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DETAILED ACTION

1. The examiner of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Ilia Ouspenski, Group Art Unit 1644, Technology Center 1600.

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 05/17/2004 has been entered.

3. Applicant's IDS, filed 08/17/2004, is acknowledged.

4. Applicant's amendments, filed 05/017/2004 and 08/17/2004, are acknowledged and have been entered.

Claim 4 has have been cancelled.

Claims 2 – 3, 7 – 8, and 10 – 31 have been cancelled previously.

Claim 1 has been amended.

Claims 32 – 34 have been added.

Claims 1, 5, 6, 9, and 32 – 34 are pending.

Examiner's Amendment

5. An Examiner's Amendment to the record appears below. Should the changes and/or additions be unacceptable to Applicant, an amendment may be filed as provided

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by 37 C.F.R. § 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the Issue Fee.

6. Authorization for this Examiner's Amendment to the claims was given in a telephone interview with Nathan S. Cassell on 08/18/2004.

7. In the Specification:

In the TITLE: "METHODS AND COMPOSITIONS FOR PREVENTING AUTOIMMUNE DISEASE" has been replaced with -- METHODS FOR PROTECTING AGAINST AUTOIMMUNE DIABETES --

8. In the Claims:

In claim 33, the phrase "a chimeric antibody" has been replaced with -- a hamster/human chimeric antibody -- .

Reasons for Allowance

9. The following is an Examiner's Statement of Reasons for Allowance:

The Examiner's Amendment set forth supra, in conjunction with Applicant's amendment filed 05/017/2004 and 08/17/2004, and declaration filed under 37 CFR1.131 by Dr. Terry L. Delovitch on 07/25/2003, and in particular references (Shehadeh et al. 1994, and Dahlquist et al. 1995), listed as References BC and BD on IDS filed 08/17/2004 have obviated the previous rejections of record mailed 05/12/2003 and 11/20/2003.

Claims 1, 5, 6, 9, and 32 – 34 are pending and allowed.

The prior art does not appear to teach or suggest a method for protecting against autoimmune diabetes by administering an anti-CD28 agonist antibody.

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10. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ILIA OUSPENSKI whose telephone number is 571-272-2920. The examiner can normally be reached on Monday-Friday 9 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on 571-272-0841. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ILIA OUSPENSKI

Patent Examiner

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August 23, 2004

PHILLIP GAMBEL
PHILLIP GAMBEL, PH.D
PRIMARY EXAMINER
Tech Center 1600
8/13/04